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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 90

JOHN H. PARKER,

Petitioner,

vs.

DENCY PARKER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

ROBERT E. LYNCH,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1313

JOHN H. PARKER,

Petitioner,

vs.

DENCY PARKER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, John H. Parker, respectfully prays for a writ of certiorari to review the final judgment of the Supreme Court of the State of Florida, wherein it adjudged that the decision of the highest court of Cuba was not conclusive upon the rights of the parties and refused to give full faith and credit to the same (R. 22-24).

Summary Statement of the Matter Involved

Respondent filed her bill of complaint against the petitioner in the Circuit Court of Dade County, Florida, for separate maintenance (R. 1-5).

Petitioner, answering, pleaded the final judgment of the Cuban Court (R. 5).

The cause was referred to a master by the trial judge, who heard testimony of witnesses and received certified copies of court proceedings had in the Republic of Cuba. The master's report (R. 8-15) found that both parties were citizens of the United States, married at Havana, Cuba, where petitioner had resided for several years, conducting extensive business interests.

Approximately a year and a half after the marriage, petitioner filed a complaint for divorce against respondent praying that the marriage entered into in Cuba be dissolved. Constructive service allowable under the laws of Cuba was had upon respondent, and the court awarded an absolute divorce.

Respondent, who was physically outside of Cuba at the time of the decree, thereafter returned and applied to the court to vacate the decree. The court denied the respondent's application, and its decision was affirmed by the highest court of Cuba. (See findings of fact—Master's Report R. 8-15.)

Subsequently, respondent established residence in Miami, Florida, and sued the petitioner in the present suit. The master's report held the judgment of absolute divorce of the Cuban courts barred respondent from the relief prayed in the Miami Court (R. 15).

The trial judge confirmed the master's report and dismissed the bill of complaint (R. 17).

The Supreme Court of Florida reversed, determining that the judgment of a foreign country would not be recognized unless opportunity had been given for a fair trial after service of process or voluntary appearance of the defendant, under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries (R. 22-24).

The question involved is whether the Florida Court, by ignoring the Cuban judgment, has deprived petitioner of a property right in violation of the 14th Amendment. This question was in a timely way raised in the State Court (R. 5-6).

Respondent's counsel, in his brief before the Supreme Court of Florida, contended that the Cuban decree was contrary to the due process clause of the Federal Constitution.

Jurisdiction

The date of the decision and judgment of the Supreme Court of the State of Florida of which review is here sought, is February 27, 1945.

The statute granting the power to review herein is Judicial Code, Section 237 (b), United States Code, Title 28, Section 344 (b). There is here involved the constitutional right of a citizen of this country to have the decision of the highest court of a foreign country given full faith and credit, where he litigates with another citizen in a court having jurisdiction of the parties and subject matter.

There is no adequate non-federal ground on which to support the opinion and judgment of the Florida Supreme Court.

Reasons for Issuance of Writ

The Supreme Court of the State of Florida has decided an important case in which it held that the judgment of the Court of the Republic of Cuba was not entitled to full faith and credit, despite the fact that the court had jurisdiction over the parties and subject matter of the case.

The judgment of the Cuban court constituted a property right, and petitioner was deprived of this property right by the Florida Court in violation of the 14th Amendment to the United States Constitution.

In view of the extent and scope of the dealings both of citizens of this country as well as citizens of other countries to the south, it is important, in the administration of justice, for this Court to determine whether judgments of a foreign civilized country determine the rights between the litigants, or whether the losing party may relitigate them in a State Court.

JOHN E. PARKER,
Petitioner,
By ROBERT E. LYNCH,
Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1313

JOHN H. PARKER,

vs. *Petitioner,*

DENCY PARKER

BRIEF IN SUPPORT OF PETITION

Opinion of the Court Below

The opinion of the Supreme Court of the State of Florida is officially reported in — Florida —; 21 So. 2nd, 141. It appears in the Record at pp. 22-24.

Jurisdiction and Statement of the Case

The jurisdictional basis for the petition and the statement of the case are found in the petition, and for the sake of brevity are not repeated here.

Specification of Errors

The Supreme Court of the State of Florida erred in holding that the decision of the highest court of Cuba was not binding upon two citizens of this country, where the Cuban courts had jurisdiction over the subject matter and parties,

and, therefore, was entitled to full faith and credit; the decision of the Florida Supreme Court deprived petitioner of his property right in violation of the 14th Amendment to the United States Constitution.

Argument

Point I

The decision below deprived petitioner of his property right without due process in violation of the 14th Amendment to the Constitution, by not recognizing and giving full faith and credit to the final judgment of the courts of the Republic of Cuba.

This court is called upon to decide the question whether the State of Florida may determine what type of final judgment of a foreign civilized court it will recognize. The Florida Supreme Court in effect held that it would reject a judgment of a foreign court unless its concept of due process was complied with.

Both parties to this litigation are citizens of the United States and were married in Havana, Cuba in January, 1940. Petitioner had resided in Havana several years prior to the marriage and conducted extensive business interests in the Republic of Cuba.

Both parties subjected themselves to the jurisdiction of the Cuban courts. The report of the master (R. 8-15) discloses that the ground of divorce claimed by the Petitioner was one recognized under Cuban law and the form of process was authorized by Cuban law. Despite the fact that the Respondent was not personally served with process, appearance thereafter in her application to vacate the decree cured any possible defect in the original process.

This court is aware that citizens of this country engage in extensive commercial activity in all of the countries, both to

the north and to the south of the United States. Are individuals and enterprises to be compelled to relitigate matters which have been tried and finally adjudicated in foreign countries in such of the State courts where the losing party may be fortunate enough to find the successful party to the first suit?

Decisions of this court which may be helpful in determining the above questions are *American Banana Company* v. *United Fruit Company*, 213 U. S. 348, wherein the Plaintiff commenced an action to recover three-fold damages under the act to protect trade against monopolies. The action which the Plaintiff complained about occurred in Costa Rice and Panama. Both parties were engaged in commercial activity in those countries.

The trial court dismissed the complaint and its action was affirmed by the Circuit Court of Appeals. In affirming the decision below, Mr. Justice Holmes, speaking for a unanimous court, said:

> "It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place, the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States, and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress."
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> "But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. Slater v. Mexican Nat. R. Co. 194 U. S. 120, 126, 48 L. ed. 900, 902, 24 Sup. Ct. Rep. 581. This principle was carried to an extreme in Milliken v. Pratt, 125 Mass. 374, 28 Am. Rep. 241. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be un-

> just, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent. Phillips v. Eyre, L. R. 4 Q. B. 225, 239, L. R. 6 Q. B. 1, 28; Dicey, Confl. L. 2d ed. 647. See also Appendix, 724, 726, note 2."

In *Slater* v. *Mexican National Railroad Company,* 194 U. S. 121; this court determined that a suit against a railroad company operating in Texas and Mexico should be commenced and determined by the law of Mexico where the wrongful death of Plaintiff's husband occurred. At page 126 the court said:

> "It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose. In *Northern P. R. Co. v. Babcock,* 154 U. S. 190, 199, 38 L. ed. 958, 961, 14 Sup. Ct. Rep. 978, an action was brought in the district of Minnesota for a death caused in Montana, and it was held that the damages were to be assessed in accordance with the Montana statute. Therefore we may lay on one side as quite inadmissible the notion that the law of the place of the act may be resorted to so far as to show that the act was a tort, and then may be abandoned, leaving the consequences to be determined according to the accident of the place where the defendant may happen to be caught."

The Florida court was not justified in adopting its notion of what the Cuban laws should be or what safeguards were necessary in order to protect the Respondent in accordance with its theory of due process. We are aware that each of the various States require quite different conditions prior to the institution of a suit for divorce, so there is nothing startling in the fact that a State or a foreign country may

have different notions and requirements before one is entitled to a divorce.

Again in the case of *Cuba Railroad Company* v. *Crosby*, 222 U. S. 473; this court reviewed the action of a lower Federal Court wherein the Plaintiff recovered for a personal injury in the District Court of New Jersey for an injury that occurred in Cuba. Again Mr. Justice Holmes, speaking for the Court, at page 477-78 said:

> "The court below went on the ground that, in the absence of evidence to the contrary, it would 'apply the law as it conceives it to be, according to its idea of right and justice; or, in other words, according to the law of the forum.' We regard this statement as too broad, and as having been wrongly applied to this case.
>
> "It may be that, in dealing with rudimentary contracts or torts made or committed abroad, such as promises to pay money for goods or services, or battery of the person, or conversion of goods, courts would assume a liability to exist if nothing to the contrary appeared. Parrot v. Mexican C. R. Co. 207 Mass. 184, 34 L. R. A. (N. S.) 261, 93 N. E. 590. Such matters are likely to impose an obligation in all civilized countries. But when an action is brought upon a cause arising outside of the jurisdiction, it always should be borne in mind that the duty of the court is not to administer its notion of justice, but to enforce an obligation that has been created by a different law. Slater v. Mexican Nat. R. Co. 194 U. S. 120, 126, 48 L. ed. 900, 902, 24 Sup. Ct. Rep. 581. The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. American Banana Co. v. United Fruit Co. 213 U. S. 347, 356, 53 L. ed. 826, 832, 29 Sup. Ct. Rep. 511, 16 A. & E. Ann. Cas. 1047. See Bean v. Morris, 221 U. S. 485, 486, 487, 55 L. ed. 821, 823, 31 Sup. Ct. Rep. 703. That, and that alone, is the foundation of their rights."

And again at page 480:

> "There was some suggestion below that there would be hardship in requiring the plaintiff to prove his case. But it should be remembered that parties do not enter into civil relations in foreign jurisdictions in reliance upon our courts. They could not complain if our courts refused to meddle with their affairs, and remitted them to the place that established and would enforce their rights."

That full faith and credit to be given to a judgment of a state Court was decided by this Court in *Davis* v. *Davis*, 305 U. S. 32; wherein it was held that one state should give full faith and credit to the judgment of divorce of a sister State even though the latter state did not recognize the same grounds of divorce.

Conclusion

It is respectfully submitted that the writ of certiorari should issue to the Supreme Court of the State of Florida.

ROBERT E. LYNCH,
Counsel for Petitioner.